



ADMINISTRATIVE SERVICES CONTRACT

This Administrative Services Contract (the “**Agreement**”) is entered into between **[PLAN SPONSOR]** (“**Plan Sponsor**”), Plan Sponsor’s group health plan known as the **[PLAN NAME, AS LISTED ON MEMBER HANDBOOK]** (“**Plan**”), and ODS Health Plan, Inc. (“**ODS**”). Plan Sponsor, Plan and ODS are sometimes referred to individually as the “**Party**” and collectively as the “**Parties.**” This Agreement is effective **[DATE]** (the “**Effective Date**”).

RECITALS

WHEREAS, Plan Sponsor has established and maintains the self-funded group health plan, Plan, for Members (as defined below);

WHEREAS, ODS provides certain ministerial administrative services to self-funded plans, including claims processing services; and

WHEREAS, Plan and Plan Sponsor desire to retain ODS to furnish the administrative services described herein;

THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement and other good and valuable consideration the receipt of which is acknowledged, the Parties agree to the following:

SECTION 1. RELATIONSHIP OF PARTIES

1.1 ODS ACTING IN MINISTERIAL CAPACITY ONLY

The Parties acknowledge and agree that ODS is acting solely in a ministerial capacity in performing ODS’ duties and obligations under this Agreement and will have no discretionary authority or responsibility with respect to the administration of the Plan. While ODS may use ODS’ reasonable business practices and ODS’ reasonable understanding of the terms of the Plan in carrying out ODS’ duties under this Agreement, ODS will have no discretionary authority and instead the Plan Administrator will have the ultimate responsibility for interpreting and administering the provisions of the Plan. Plan Administrator means **[PLAN ADMINISTRATOR NAME]**, who or which the Plan designates the Plan Administrator and named fiduciary for the Plan.

ODS will abide by all decisions of the Plan Administrator on all questions of substance and procedure concerning the Plan. ODS is not the Plan Administrator or a Plan-named fiduciary under the federal Employee Retirement Income Security Act of 1974, as amended (ERISA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the federal Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) or other applicable law. Throughout the Agreement, ERISA only applies when the Plan is part of an employee welfare benefit plan regulated under ERISA. ODS will not be responsible for advising the Plan Sponsor or the Plan Administrator with respect to their fiduciary duties under the Agreement or for making any recommendations with respect to the investment of Plan assets.

For the term of this agreement, Plan has the meaning given to that term in the heading of this Agreement^[.], except that if the Plan entitles Members to benefits other than the health benefits to be administered under this Agreement, then references in the Agreement to the Plan refer only to the benefits designated in the Member Handbook as the following: **[BENEFIT IDENTIFIERS WILL BE ADDED].**

1.2 ODS IS NOT INSURING ANY PLAN LIABILITIES

ODS does not insure or underwrite any liability associated with the Plan and will have no financial risk or liability with respect to the provision of benefits under the Plan.

1.3 AUTHORITY

Plan Sponsor grants ODS the authority to serve as an agent of the Plan Sponsor and Plan Administrator in carrying out ODS' duties under this Agreement, but only those ODS duties that are expressly stated in this Agreement or as mutually agreed in writing by the Parties.

1.4 PLAN SPONSOR RESPONSIBLE FOR ADOPTION OF PLAN

Plan Sponsor, and not ODS, has the sole and ultimate authority and responsibility for sponsoring, adopting, amending, designing and terminating the Plan.

1.5 PLAN ADMINISTRATOR AND FIDUCIARY

With respect to the Plan, Plan Administrator is the plan administrator and the Plan-named fiduciary for purposes of § 402(a)(1) of ERISA (if applicable), COBRA, HIPAA and other applicable law, and, as such, is responsible and liable for administering all aspects of the Plan and all related regulatory compliance. The duties of the Plan Sponsor, the Plan Administrator or both specifically include, but are not limited to, the following:

- a. Ensure the Plan is in compliance with any applicable state and federal laws, including but not limited to ERISA, COBRA, HIPAA, the Internal Revenue Code and the Patient Protection and Affordable Care Act (PPACA);
- b. Perform any applicable nondiscrimination testing;
- c. Amend the Plan as necessary to ensure ongoing compliance with applicable law;
- d. Provide Members copies of the Summary Plan Description (SPD), Member Handbook, Summary of Benefits and Coverage (SBC, when required), Summary of Material Modifications (SMM) and summary annual reports;
- e. File any required tax or governmental returns (including but not limited to Form 5500 returns);
- f. Respond to requests;
- g. Execute and retain required Plan documentation.

For the purposes of this agreement, Member means an individual entitled to receive benefits for Covered Services (including, but not limited to, application of an expense to Member Cost-Sharing, whether or not a payment under the Plan is made) under the terms of the Plan at the time the Covered Services are provided. Member Cost-Sharing includes deductibles, copayments, coinsurance and similar amounts for Covered Services that the Member is responsible to pay under the Plan.

As discussed in section 1.5.d above, the Member Handbook is a written document that establishes eligibility, benefits and other legal requirements of the Plan available to Members. A Member Handbook will be prepared by ODS only if ODS expressly agrees to undertake that activity and subject to all other terms of this Agreement. A Summary Plan Description (SPD) is a written summary of the terms and benefits of the Plan available to members.

1.6 FINAL RESPONSIBILITY AND DETERMINATIONS

Plan Sponsor, Plan Administrator, or both, will have the final responsibility and liability for payment of all benefits under the Plan. Plan Sponsor and Plan Administrator will pay all expenses incident to the operation of the Plan. In its capacity as ERISA plan administrator, Plan

Administrator will be the final arbiter as to the interpretation of the Plan and the determination of eligibility for coverage and payment of benefits. All final determinations as to a Member's entitlement to Plan benefits are to be made by the Plan Sponsor, Plan Administrator or both, including any determination upon an appeal of a denied claim for Plan benefits.

1.7 ODS IS AN INDEPENDENT CONTRACTOR

ODS is and will remain an independent contractor with respect to the services being performed under the terms of this Agreement and will not for any purpose be deemed an employee of Plan Sponsor, Plan or Plan Administrator, and ODS will not be deemed to be a partner or to be governed by any legal relationship other than that of independent contractor. ODS does not assume any responsibility for the general policy design of the Plan, the adequacy of the funding thereof nor any act, omission or breach of duty by Plan Sponsor or Plan Administrator.

1.8 PLAN ACTS THROUGH PLAN ADMINISTRATOR

Any actions, directions or representations made by Plan Administrator to ODS may be considered the actions, directions or representations of the Plan.

SECTION 2. THE PLAN AND OTHER DOCUMENTS

2.1 PLAN ADOPTED

The most current Member Handbook describing the Plan benefits that have been adopted by Plan Sponsor are incorporated into this Agreement by reference. If Plan Sponsor changes or adds any benefits under the Plan, ODS will not be required to administer those changes or additions unless all of the following conditions have been met:

- a. Plan Sponsor has provided advance notice to ODS of the Plan Sponsor's intent to change or add benefits under the Plan;
- b. ODS has provided Plan Sponsor advanced written notice of ODS' willingness and ability to adequately administer the changes or additions; and
- c. Plan Sponsor agrees to any changes in the fees required by ODS to administer the changes or additions by agreeing to a written amendment to the Fee Schedule proposed by ODS.

2.2 ADMINISTRATIVE INFORMATION

Plan Sponsor will furnish ODS with any and all instructions, contracts, information or documents deemed necessary by ODS to properly perform ODS' obligations under this Agreement. Such information will include, but not be limited to, copies of the Member Handbook and any and all amendments or successor documents. ODS, at the request of Plan Sponsor and as part of ODS' ministerial duties under this Agreement, may prepare and/or print a Member Handbook and other documents that communicate summary details of the Plan to Members. However, Plan Sponsor retains ultimate authority as to the content, distribution and legal or regulatory requirements related to Plan, including the Member Handbook.

2.3 OTHER BENEFIT PLANS

If Plan Sponsor adopts additional self-funded benefit plans, Plan Sponsor may negotiate with ODS for the inclusion of such plans under this Agreement.

2.4 INTERPRETATION

The terms and conditions of this Agreement govern over any conflicting or inconsistent terms in the Member Handbook.

SECTION 3. TERM OF AGREEMENT

3.1 TERM

For the purposes of this agreement, Term means the period of time this Agreement remains in effect. The Agreement may renew for subsequent 12 month periods, each of which is referred to as a Term. If the Agreement is terminated early for any reason prior to the expiration of a full 12 month period, the shorter period between the first day of the Term and the date the Agreement is terminated is the Term.

The initial term of this Agreement will commence on the Effective Date and terminate after 12 months, unless terminated sooner under Section 4.

3.2 RENEWAL

After the completion of the initial 12-month period, this Agreement will automatically renew for additional 12-month periods on each subsequent anniversary of the Effective Date but subject to a revised Fee Schedule proposed in advance by ODS, unless:

- a. By or before the anniversary of the Effective Date, the Parties have not completed negotiation of and agreement to an amended Fee Schedule and any other amendments to this Agreement proposed by any Party; or
- b. Any Party has given 30 days advance written notice prior to the anniversary of the Effective Date of the Party's intent not to renew the Agreement.

If, by the conclusion of any Term, the Parties have not completed the negotiations for, and execution of, a new Fee Schedule, but termination of this Agreement has not occurred, ODS at ODS' discretion may continue ODS' services under the Agreement, except that ODS' newly proposed and unexecuted Fee Schedule will be in effect.

SECTION 4. TERMINATION AND MODIFICATION

4.1 TERMINATION WITHOUT CAUSE

Any Party may terminate this Agreement without cause upon 30 days prior written notice to the other Parties.

4.2 TERMINATION FOR CAUSE

This Agreement terminates, and ODS' obligation to process claims and pay benefits will cease upon such termination, in accord with any of the following:

- a. 30 days after written notice has been given by ODS to Plan or Plan Sponsor, or by Plan or Plan Sponsor to ODS, of the breach of material obligations under this Agreement; provided that such breach has not been cured within such 30 day period. Notwithstanding the foregoing, Plan Sponsor's default in any payment under this Agreement will be subject to termination under Section 4.2.b.;
- b. Upon 3 business days written notice, in ODS' sole discretion, if Plan Sponsor fails to pay:
 - i. Paid Claims to ODS by their due date or if Plan Sponsor does not pay any other payment due under this Agreement by its due date. Paid Claim means the amount

- ODS has paid on behalf of a Member pursuant to this Agreement in response to a request for the payment of benefits under the Plan; or
- ii. Administrative fees, charges or other amounts due to ODS under the terms of this Agreement (including maintenance of the advance deposit, if applicable);
- c. Upon 3 business days written notice, in ODS' sole discretion:
- i. If Plan Sponsor assigns this Agreement, unless such assignment had ODS' prior approval in writing; or
 - ii. If Plan Sponsor is sold (including a sale of substantially all assets of Plan Sponsor) or merges, unless such sale or merger had ODS' prior approval in writing;
- d. As of the effective date of any law, regulation or interpretation if any law or regulation is enacted which prohibits the continuance of this Agreement, or any existing law or regulation is interpreted by ODS to so prohibit the continuance of this Agreement;
- e. If Plan Sponsor terminates the Plan, provided that Plan Sponsor will provide ODS with written notice 30 days prior to termination;
- f. If the Plan is modified, unless this Agreement is amended to make such modified plan the Plan under this Agreement;
- g. 10 days following the occurrence of any of the following if not reversed or cured prior to the expiration of the 10 day period:
- i. A finding or admission that Plan Sponsor or Plan is insolvent;
 - ii. The date that Plan Sponsor or Plan files for the protection provided under any bankruptcy law;
 - iii. The date that Plan Sponsor's or Plan's creditors seek to have Plan Sponsor or Plan declared bankrupt or placed under the protection of the Bankruptcy Court; or
 - iv. The date that Plan Sponsor or Plan Sponsor's creditors or Plan or Plan's creditors seek to have a receiver appointed to manage Plan Sponsor's business or Plan.

4.3 OTHER RIGHTS TO TERMINATE

ODS' right to terminate pursuant to Section 4 will be in addition to and not a limitation of any right to terminate (or right to offset) under any other provisions of this Agreement.

4.4 LATE PAYMENT AND REINSTATEMENT

Any payment received by ODS after termination of this Agreement will be deposited for security purposes only and will not be deemed to have been accepted for reinstatement or as an accord and satisfaction. This Agreement will be reinstated only upon the written endorsement of ODS.

4.5 MODIFICATION

Except as otherwise specifically provided in this Agreement, this Agreement may be modified only by a written agreement signed by an authorized representative of each Party.

SECTION 5. ODS' MINISTERIAL SERVICES

5.1 CLAIMS PROCESSING

During the Term of this Agreement and any period of Run-Out Claims Processing (as defined in the following paragraph), ODS will issue benefit payments and denials, along with explanations of benefits, in accordance with the terms of the Plan, ODS' medical and payment policies and any In-Network Provider contracts for those claims Incurred between the Claims Incurred dates presented in the Fee Schedule. Incurred means the date upon which services or supplies have been provided to a Member during the Term. For the purposes of this agreement, In-Network Provider means any physician, health care facility, pharmacy or other health care provider, licensed where required, performing services within the scope of its license, with whom ODS has entered into an agreement

which allows a Member to obtain health care services according to certain pre-negotiated fees and other relevant terms.

Run-Out Claims Processing or Run-Out means ODS will continue to process claims and otherwise provide administrative services with regard to claims Incurred prior to the date of termination of this Agreement.

ODS will discontinue processing any and all claims upon termination of this Agreement and completion of any period of Run-Out, regardless of the Incurred date of the claim, as further provided in Section 8.1 of this Agreement. In evaluating claims, ODS will use ODS' claim processing system of edits and other applicable standards to determine whether claims are Covered Services.

Covered Services means the services, supplies, treatments or accommodations that are included within that term in the Member Handbook. If there is no Member Handbook, Covered Services means the services, supplies, treatments or accommodations for which benefits are provided under the Plan that ODS is required to administer under Section 2.1 (including, but not limited to, any services, supplies, treatments or accommodations to which Member Cost-Sharing is applied, regardless of whether a payment under the Plan is made).

5.2 GENERAL ADMINISTRATIVE SERVICES

ODS will:

- a. Answer Member inquiries regarding eligibility, Plan benefits, status of benefit payments, complaints and requests for forms;
- b. Although the design of the Plan is the sole responsibility of Plan Sponsor, upon request of the Plan Sponsor, assist in the development and design of the Plan, both initially and in connection with benefit revisions, additions and extensions;
- c. Upon the separate written request of the Plan Sponsor and subject to Section 2.2 and the payment of additional fees to be indicated by ODS, draft, prepare and print Member Handbooks and other Member materials;
- d. Upon request of the Plan Sponsor, assist with the enrollment of Members;
- e. Maintain eligibility files based upon information provided by Plan Sponsor;
- f. Issue identification cards to Plan or Members;
- g. Initiate reasonable overpayment, subrogation and similar right of reimbursement recovery efforts in accordance with ODS' standard business practices;
- h. Provide Members with access to In-Network Providers. Plan Sponsor will not attempt to establish or negotiate its own health care provider contracted network;
- i. Upon request of the Plan Sponsor, prepare standard reports for use by Plan in the financial management and administrative control of the Plan;
- j. Conduct first and second level appeal reviews subject to federal regulations and the Terms of the Plan;
- k. ODS will coordinate external review requests with Individual Review Organizations (IROs) subject to a fixed fee as indicated in the Fee Schedule; and]
- l. Prepare disclosures of creditable coverage for Members as necessary to comply with HIPAA, unless Plan Sponsor chooses to provide Plan Sponsor's own disclosures, in which case Plan Sponsor will notify ODS and will be solely responsible for complying with all legal requirements with regard to certificates of creditable coverage.

5.3 PROCESSING ERRORS

Claim processing errors may result from a number of causes, including retroactive termination, provider billing errors, claims processing mistakes, incorrect information from an In-Network Provider or Member or other reasons. In addition, claims processing adjustments may result from a number of causes, including coordination of benefits recovery, third party liability recovery, audit or

investigation findings and other reasons. If ODS becomes aware ODS has underpaid a claim or has misquoted Plan benefits to a member or In-Network Provider, for whatever reason, ODS will reprocess the claim and pay the appropriate amount, charging the amount as a claims expense to Plan Sponsor, except as precluded by Run-Out. If ODS becomes aware ODS has overpaid a claim, for whatever reason, ODS will reprocess the claim at the appropriate amount, attempt to recover appropriately and, if successful, credit Plan Sponsor with the amount less ODS' reasonable collection expenses. Plan Sponsor acknowledges that claim processing errors and adjustments occur in the normal course of business and that, as long as ODS makes reasonable attempts to correct the errors and make the adjustments, ODS has met ODS' obligation to Plan Sponsor and ODS will not be considered to be negligent under Section 9.2.c of this Agreement.

5.4 NONSTANDARD REPORTS

If Plan Sponsor or Plan Administrator requests any nonstandard report and ODS, in its sole discretion, agrees to provide such report, ODS reserves the right to charge for nonstandard reports. Unless otherwise agreed upon by the Parties, nonstandard reports shall be subject to a charge as indicated in the Fee Schedule. All other charges for any nonstandard reports not specifically indicated in the Fee Schedule shall be agreed upon by the Parties in writing before the reports are prepared. Notwithstanding the foregoing, ODS will not prepare Incurred But Not Reported (IBNR) reports nor will ODS sign prepared financial statements.

5.5 OUT OF NETWORK CLAIMS

ODS will provide claim management services for out of network claims as described in the Claims Management, the next generation (CM² Exhibit).

SECTION 6. PLAN SPONSOR REQUIREMENTS

6.1 FEES

Plan Sponsor will pay ODS all administrative fees as set forth on the Fee Schedule and any other fees set forth in this Agreement or other applicable Exhibits. The Fee Schedule and any other Exhibits will be amended on an annual basis or as otherwise set forth in this Agreement.

6.2 AUTOMATIC FEE ADJUSTMENTS FOR INCREASE OF ADMINISTRATION

If, during any Term of the Agreement, ODS' administrative duties change or ODS' expenses of administration increase for the reasons stated below, ODS may provide reasonable notice to Plan Sponsor of an alternative Fee Schedule and such new Fee Schedule will go into effect automatically. ODS may adjust the Fee Schedule automatically in the following situations:

- a. ODS' costs increase due to legislative or regulatory changes;
- b. ODS' costs increase due to a change in producer and/or consultant commissions;
- c. ODS' costs increase due to mutually agreed upon benefit changes or additional ODS services;
- or
- d. Plan enrollment increases or decreases by 10% or more at any time during the Term relative to the "Enrollment Assumption" listed in the Fee Schedule.

Upon reasonable notice to Plan Sponsor, such fee adjustment will apply as of the first month following the event identified above and continue for the remainder of the Term.

6.3 TAX FEES

ODS will bill Plan Sponsor for any and all federal and state taxes and/or fees, including taxes or fees which may be mandated or assessed on benefit payments made by ODS on behalf of the Plan. Any such fee will be billed monthly.

6.4 FUNDS FOR PAYMENT OF BENEFITS

Plan Sponsor will provide to ODS all funds necessary to pay Plan benefits.

6.5 CLAIMS BILLING

Based on the billing period, ODS will notify Plan Sponsor by an agreed-upon method (such as by email) of the amount of Paid Claims since the Effective Date (if this is the first such notification under this Agreement) or since the most recent previous notification (if this notification is other than the first under this Agreement). This notification is referred to as the "Claims Billing."

6.6 PAYMENT OF FUNDS

Plan Sponsor will pay to ODS the amount of each Claims Billing communicated to Plan Sponsor under Section 6.5 according to the terms set forth on the Fee Schedule.

6.7 ADVANCE DEPOSIT

Prior to the Effective Date of this Agreement, Plan Sponsor will pay to ODS an advance deposit as set out in the Fee Schedule. The advance deposit is calculated on the basis of the enrollment assumption documented in the Fee Schedule. Each time this Agreement is renewed for an additional Term, ODS will re-evaluate the enrollment assumption and advance deposit and, if necessary, Plan Sponsor will pay to ODS the amount needed to bring the advance deposit to the re-evaluated amount. After a final accounting by ODS following termination of this Agreement and completion of any period of Run-Out, ODS will refund the balance of the advance deposit remaining after offset of any amount owed to ODS for any reason. ODS will not pay interest on advanced deposits but is entitled to any earned interest from the advance deposit.

(Variable: remove for dental-only plans)

6.8 PHARMACY REBATES

ODS may participate in arrangements with drug manufacturers which allow ODS to receive monetary rebates based, among other things, on the volume of certain prescription drugs purchased by or on behalf of Members under the Plan. Any such rebates received by ODS from drug manufacturers will be paid (or credited) to Plan Sponsor, less a fixed percentage withheld to cover ODS' costs of collecting and administering the rebate program and as set forth in the Fee Schedule.].

6.9 SUBROGATION AND RIGHT OF REIMBURSEMENT

ODS will make its best efforts to identify and pursue potential subrogation and similar right of reimbursement recovery opportunities with regard to claims Incurred during the Term under Plan, in accordance with ODS' standard business practices. Plan Sponsor will notify ODS of subrogation and right of reimbursement opportunities of which it becomes aware. A fixed percentage of subrogation and right of reimbursement recoveries will be withheld to cover ODS' costs of pursuit of such recoveries and is identified as the subrogation/right of reimbursement fee in the Fee Schedule. This subrogation/right of reimbursement fee shall be in addition to any other fees and expenses that ODS is entitled to, or otherwise obligated to pay, out of any subrogation or similar right of reimbursement recovery.

Unless notified to the contrary by the Plan Sponsor by or before the later of the termination date or the completion of any period of Run-Out, ODS will continue, after termination and completion of any

Run-Out, to pursue Plan subrogation and similar right of reimbursement files that are then in its possession and will be entitled to withhold the subrogation/right of reimbursement fee from recoveries it obtains on those files. ODS' pursuit of recoveries under this provision, whether before or after the termination date and completion of any period of Run-Out, will continue only as long as ODS determines such recoveries are active and viable. The subrogation/right of reimbursement fee is calculated from the amount recovered, net of any attorney fees, costs, or other expenses that are paid to effectuate the recovery and net of any stop-loss reinsurance credited first to ODS. ODS will calculate and withhold the subrogation/right of reimbursement fee from each net recovery and then credit or remit the remaining net balance of the recovery to Plan Sponsor.

6.10 LATE FEES

If administrative fees, claims or other invoices are not paid to ODS by the due date, ODS may in its discretion charge a late fee. Late fees are calculated from the date payment is due. See section 7.3 for additional information regarding late fees.

(Variable: removed for dental-only coverage)

6.11 [PORTABILITY COVERAGE

(variable: choose one of the following option The 2nd option is non-standard)

[Plan Sponsor declines to make ODS' portability coverage available for Members losing coverage under the Plan.] [Plan Sponsor chooses to make ODS' portability coverage available for Members losing coverage under the Plan, and Plan Sponsor agrees to pay ODS the amount as set forth in the Fee Schedule for availability of this coverage.]]

6.12 INFORMATION NECESSARY TO COMPLY WITH GOVERNMENTAL REQUIREMENTS

Plan Sponsor will provide the information necessary for ODS to comply with ODS' obligations under any federal or state law related to this Agreement, including but not limited to the social security numbers of the Members, the working status of Members and tax identification number of the group, as required by the Medicare Secondary Payor reporting requirements applicable to third party administrators for group health plans under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.

SECTION 7. ELIGIBILITY

7.1 ELIGIBILITY

Plan Sponsor shall administer eligibility terms and conditions in accordance with the Plan to determine only eligible employees and dependents are receiving benefits, including but limited to verification that employees apply for coverage within the established timeframe and correct effective dates are assigned to new members, COBRA continuants and terminations. Plan Sponsor, not ODS, is responsible for determining, maintaining and remedying errors on Member eligibility records. If enrollment forms are not provided to ODS, Plan Sponsor will provide Member eligibility records to ODS in a form acceptable to ODS and upon an agreed frequency. Plan Sponsor agrees to comply with the terms and conditions for eligibility and enrollment set forth in the Plan.

Failure for Plan Sponsor to administer eligibility in accordance with the Plan may result in a denial of benefits under stop loss provisions.

ODS will provide subscriber identification cards and will reissue cards as needed as a result of eligibility changes reflected on the cards. A request for a mass reissue of cards to all enrolled subscribers is also available upon request with an associated fee, as described in the Fee Schedule, to cover the cost of the cards and postage.

7.2 COMMENCEMENT OF COVERAGE

A Member's coverage begins on the first day of the month (assuming eligibility, satisfaction of probationary periods, payment of the rate and other requirements of eligibility), and terminates on the last day of a month. Administrative fees are not pro-rated for partial months of coverage.

7.3 BILLING AND PAYMENT

Payment by the Plan Sponsor for ODS' administration fees are due by the first of each calendar month for that month's coverage. If the premiums for the Plan or any of the Plan's members are not received by the 15th of the month (the Plan's grace period), the Plan's or member's insurance coverage may be terminated at the end of the calendar month for which premium was received by ODS. Failure to pay on time can result in late fees and/or a claims hold.

ODS reserves the right to require that premiums be paid through electronic funds transfer (EFT).

(variable: Choose one of the following two paragraphs based on the billing method used)

(For Positive Bill) [Payment of premiums is based on ODS-generated billings. If payment is adjusted by the Plan Sponsor, detailed supporting documentation is needed for each adjustment prior to payment. Discrepancies will need to be included in the next payment.]

(For Negative Bill) [Payment is based on Plan Sponsor-generated billings based upon the Plan Sponsor's enrollment records. Detailed electronic payment supporting documentation in a format accepted by ODS is required. ODS will reconcile payment with ODS' records and provide the Plan Sponsor with any discrepancies. Any variations in the Parties' records will be reconciled in the following month's premium payment.]

7.4 TIMELY INFORMATION

Plan Sponsor acknowledges that ODS' ability to effectively perform the administrative services required by this Agreement depends upon Plan Sponsor's furnishing to ODS timely information in the form of properly completed applications and data for those Members who are eligible for coverage and timely notice of those who terminate coverage. This information must be provided in a form acceptable to ODS.

An application for eligible employees and their dependents must be completed within 31 days of the eligibility date. ODS will not accept an application received more than 12 months after the eligibility date. If an application is received beyond the 12 months period, enrollment will be denied and the eligible member and dependent(s) will have to wait until the next open enrollment period to apply for coverage.

7.5 NO LIABILITY IF INFORMATION NOT TIMELY

ODS will not be liable for non-performance or delay in the performance of this Agreement caused by or contributed to in whole or in part by the failure of Plan Sponsor to timely furnish any information necessary to determine eligibility for coverage or for adjudication of benefits. ODS reserves the right to hold the processing and payment of claims until necessary information is received from the Plan Sponsor.

7.6 NO LIABILITY IF INFORMATION NOT CORRECT OR COMPLETE

ODS will not be liable for any claims payment errors based on incorrect or incomplete eligibility information. If ODS identifies such an error, and if the Plan Sponsor requests that ODS pursue recovery of any overpayment based on the incorrect eligibility information ODS received, Plan

Sponsor will pay ODS a fixed percentage of any recovery to cover ODS' costs of this pursuit and as identified in the fee Schedule. This fee will be in addition to any other fees and expenses that ODS is entitled to, or otherwise obligated to pay, out of any recovery. Plan Sponsor will indemnify and hold harmless ODS for any and all liability ODS incurs as a result of its pursuit of overpayment errors based on incorrect or incomplete eligibility information.

To reduce the likelihood of incorrect or incomplete eligibility information, Plan Sponsor should regularly review ODS bills and membership lists to ensure records are accurate. ODS will supply monthly membership lists upon request by the Plan Sponsor.

7.7 RETROACTIVE TERMINATION

Termination notices should be sent to ODS prior to the termination date when possible to reduce claims overpayments. However, retroactive termination will be allowed and must be in accordance with the PPACA. Members may be terminated retroactively up to 12 months for billing and claims adjustments. ODS reserves the right to charge a fee for reprocessing retroactive claims as administrative fees do not cover the months for which claims are being reprocessed.

SECTION 8. DISPOSITION OF CLAIMS UPON TERMINATION

8.1 TERMINATION OF ADMINISTRATIVE SERVICES

The Parties agree that ODS will provide Run-Out Claim Processing services after the termination of this Agreement. ODS will continue to perform Run-Out Claim Processing services, however, only:

- a. For the amount of time presented in the Fee Schedule (or any other written agreement of the Parties for Run-Out Claims Processing services);
- b. For claims Incurred prior to the termination date;
- c. If Plan Sponsor pays the Run-Out Claim Processing fees presented on the Fee Schedule (or any other written agreement of the Parties for Run-Out Claims Processing services) in a timely manner; and
- d. If the Plan Sponsor remits an advance deposit (or increases the existing amount of the deposit) to ODS in advance and in an amount to be reasonably determined in ODS' sole discretion based upon ODS' estimate of claims Incurred but not paid and an estimate of the Run-Out administrative expenses, as calculated by ODS.

If Plan Sponsor breaches paragraph (c) or (d), all administrative services required of ODS under any term of this Agreement or otherwise, including but not limited to claims processing and payments, will immediately cease; except that, if ODS reasonably concludes that it is legally required to continue providing administrative services, Run-Out Claims Processing will continue and Plan Sponsor is obligated to pay ODS for its Run-Out Claims Processing services under the terms of this Agreement.

8.2 DISPOSITION OF CLAIMS AFTER TERMINATION

After termination of this Agreement and completion of any period of Run-Out, ODS will deny:

- a. All claims under the Plan that are in the possession of ODS for which payment has not been issued, regardless of the date the claims were Incurred; and
- b. All claims under the Plan that are received by ODS thereafter.

Plan Sponsor will pay ODS all benefit payments and administration charges that are due ODS and remain unreimbursed at the time of or after termination and completion of any period of Run-Out.

SECTION 9. INDEMNIFICATION AND LAWSUITS AGAINST THE PARTIES

9.1 CLAIMS DISPUTES

In the event a dispute arises with a Member or other third party over Plan benefits or any action taken by ODS related to the payment of Plan benefits in the performance of ODS' duties under the Agreement (referred to in this Agreement as a Claim Dispute), the Parties agree to the following:

a. Notification of Dispute

When a Party reasonably determines that a Claim Dispute may arise, the Party will promptly notify the other Parties in writing as to the issues involved in the Claim Dispute.

b. Litigation Defense

If ODS is a party to any legal action related to or arising out of a Claim Dispute, ODS will defend itself against any such legal action (including, but not limited to, litigation, arbitration and/or mediation) brought by or on behalf of any Member or other third party, and ODS will have full discretionary authority in all matters related to the conduct, defense or settlement of any such action, including, but not limited to, the selection of counsel and pursuit of any counter- or cross-claim. As provided in Section 9.2.c, Plan and Plan Sponsor, jointly and severally, are responsible for ODS' costs in defending any legal action related to or arising out of a Claim Dispute including but not limited to, the payment of counsel and filing, court, arbitrator, mediator and other similar fees and expenses, and Plan Sponsor and Plan, jointly and severally, agree to reimburse and indemnify ODS for such costs as they are incurred by ODS and billed, with supporting documentation, to Plan or Plan Sponsor.

9.2 INDEMNIFICATION

The Parties agree to the following indemnification provisions:

- a. Plan Sponsor and Plan, jointly and severally, will indemnify, defend and hold harmless ODS, ODS affiliates and their respective directors, officers, employees (acting in the course of their employment, but not as claimant) and agents, for that portion of any liability, settlement and related expense (including the cost of legal defense through and including any appeals) resulting solely and directly from Plan Sponsor's or Plan's breach of this Agreement, negligence, gross negligence, willful misconduct, criminal conduct, fraud or breach of a fiduciary responsibility related to or arising out of this Agreement.
- b. Subject to Section 9.2.c, ODS will indemnify, defend and hold harmless Plan Sponsor and Plan, their affiliates and their respective directors, officers, employees (acting in the course of their employment, but not as claimant) and agents, for that portion of any liability, settlement and related expense (including the cost of legal defense through and including any appeals) resulting solely and directly from ODS' breach of this Agreement, negligence, gross negligence, willful misconduct, criminal conduct, fraud or breach of a fiduciary responsibility related to or arising out of this Agreement.
- c. Notwithstanding anything herein to the contrary, Plan Sponsor and Plan, jointly and severally, will remain obligated for:
 - i. Indemnifying ODS for any Claim Dispute under Section 9.1 of this Agreement;
 - ii. Indemnifying ODS from any claim or loss which results from Plan Sponsor's incorrect certification of Member eligibility;
 - iii. The payment of all Plan benefits; and
 - iv. The payment of all benefits, costs or damages when the acts giving rise to the liability were performed by Plan Sponsor or Plan, or by ODS upon Plan Sponsor's or Plan's express direction.

ODS will not be considered negligent if ODS' claims processing services are performed in accord with the standards of Section 5.3.

SECTION 10. GENERAL

10.1 INSURANCE

Each Party will obtain, at its own cost, and keep in force adequate policies providing comprehensive general liability and other insurance in amounts consistent with industry standards as may be necessary to insure the Party and its agents and employees against any claim or claims for damages arising out of the performance of its obligations under this Agreement. If any Party procures one or more claims-made policies to satisfy its obligations under this Agreement, the Party will obtain any extended reporting endorsement ("tail coverage") required to continuously maintain such coverage in effect for all acts, omissions, events or occurrences during the Term of this Agreement, without limit or restriction as to the making of the claim or demand. Evidence of the insurance coverage required under this Section will be made available to a Party upon request.

10.2 JOINT OWNERSHIP OF CERTAIN RECORDS; CONFIDENTIALITY

For the purposes of this agreement, Proprietary Materials means ODS proprietary and confidential records, documents, lists, books, recorded information, data stored on data processing media, trade secrets, symbols, trademarks, service marks, systems, formats, programs, procedures, protocols, contract forms, pricing data, deidentified data, utilization information, fee schedules, reasonable and customary charges profiles, designs and business plans. Proprietary Materials specifically includes any data and information, including any data provided to Plan Sponsor or Plan in the form of a data extract or otherwise, related to the composition of the ODS network of providers, the contracted (or "allowed" amounts) paid to In-Network Providers, the terms of the agreement between ODS and the In-Network Providers and the discounts to ODS offered by In-Network Providers. Proprietary Materials also consist of any analyses, compilations, studies or other documents created on the basis of other Proprietary Materials.

The Parties agree that records and documents that constitute "protected health information" as that term is defined in 45 CFR 160.103 and that pertain to administration of the Plan will be and remain the joint property of the Plan and ODS. All Proprietary Materials are the sole property of ODS. ODS will have the right to protect the confidentiality of the Proprietary Materials and will not be required to make such Proprietary Materials available to anyone. Plan Sponsor agrees to maintain the confidentiality of any Proprietary Materials ODS provides, and Plan Sponsor will not provide any Proprietary Materials to any other person, including any data extracts or summary information, except to the extent such Proprietary Materials have been made available to the public without fault of the Plan Sponsor. In the event of a termination of this Agreement, ODS will cooperate with the Plan Sponsor to provide copies of certain requested jointly owned information. Plan Sponsor or Plan agrees to reimburse ODS for the reasonable cost of such assistance and copies.

10.3 ENTIRE AGREEMENT

This Agreement and its Exhibits supersede and replace all prior oral or written agreements, if any, between Plan Sponsor and ODS and is the entire agreement between the Parties.

Exhibit means the following when referenced collectively:

- a. "Fee Schedule Exhibit" means the document with that title that is attached to this Agreement and that contains the list of fees and other prices for ODS' services.
- b. "HIPAA Exhibit" means the document with that title that is attached to this Agreement and that contains the terms among the Parties that are required to comply with HIPAA.

- c. "CM² Exhibit" means the document with that title that is attached to this Agreement and that contains the list of fees and other prices for ODS' use of CM²'s claims management services for claims.

10.4 NON-WAIVER

The failure or refusal of any Party to enforce or enjoin any breach or violation of any provision of this Agreement will not be a waiver of that Party's right to enforce any subsequent breach.

10.5 TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

10.6 AUDIT RIGHTS

During the Term of this Agreement, the period of Run-Out and for a period of 6 months following the Agreement's termination and completion of any period of Run-Out, Plan Sponsor or Plan (or its designated claims auditing representative, if approved by ODS in writing) will have the right to initiate an examination of ODS' records. Examined records will relate only to the Plan benefits. Any such audit will be conducted during regular business hours at ODS' offices and following 60 days prior written notice. Any examination of individual Members' health benefit payment records will be carried out in a manner specifically designed to protect the confidentiality of the Members' medical information in compliance with all federal and state laws governing confidentiality and privacy of health information. All audits will be limited to information relating to the Term in which the audit is conducted and/or the immediately preceding Term and will be concluded within 18 months of the last day of the Term under audit. Plan Sponsor or Plan will pay all expenses incurred by ODS, Plan and Plan Sponsor relating to the audit. ODS will not be required to disclose any information in violation of applicable law. ODS does not permit any extrapolation from a sample of claims to make determinations about the universe of claims processed as a whole.

Prior to commencement of any audit, Plan Sponsor, Plan and its outside auditor, if any, will execute a written audit agreement with ODS which sets forth the terms and conditions of the audit according to ODS' most recent external audit policy. ODS reserves the right to deny access to a third party contingency fee auditor.

With regard to its contracts with In-Network Providers and related information, the terms of which are not otherwise publicly available, ODS reserves the right to deny access to the contracts. At ODS' sole discretion, ODS will provide access to its contracts with In-Network Providers only (i) for the purpose of ensuring that a claim was correctly paid by the claims processing system at the appropriately contracted rate, and (ii) only in a manner that ODS deems would protect the confidential and/or proprietary information contained therein. This reservation of right pertains not only to the actual contracts but also to any data, reports or other information generated from which the terms of the contracts could be determined, which are considered Proprietary Material.

10.7 SEVERABILITY

In the event any one or more of the terms, conditions or provisions contained in the Agreement or any application thereof is declared invalid, illegal or unenforceable in any respect by any arbitrator or court of competent jurisdiction, the validity, legality or enforceability of the remaining terms, conditions or provisions of this Agreement and any other application thereof will not in any way be affected or impaired thereby, and this Agreement will be construed as if such invalid, illegal or unenforceable provisions were not contained herein.

10.8 RESTRICTION ON ASSIGNMENT

No Party will assign or transfer any of its rights, or delegate any of its duties or obligations hereunder, directly or indirectly, without the prior written consent of the other Parties. A Party may, with the prior written consent of the other Parties, assign this Agreement in its entirety to any person or entity, other than a direct competitor of a Party, which acquires the business of the assigning Party or with which the Party merges or is consolidated or affiliated, provided that the permitted assignee agrees in writing to be bound by the terms of this Agreement. Any attempted assignment, transfer or delegation in violation of this paragraph will be null and void.

10.9 NOTICES

Except for a revised Fee Schedule under Section 3.2 or an alternative Fee Schedule under Section 6.2 (which would be effective as provided in those sections) and except for endorsements or amendments to this Agreement (which would be effective on the endorsement or amendment effective date), all notices, requests, demands and other communications required or permitted to be given or made under the Agreement will be in writing and will be effective on the date of actual hard copy receipt (including by confirmed facsimile receipt), and will be sent to Plan Sponsor, Plan or ODS, as the case may be, to such address, person or entity as set forth below, or as any Party will designate by notice to the other Parties in accordance herewith.

10.10 BINDING EFFECT

This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns.

10.11 NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any right or remedy of any nature whatsoever; and nothing in this Agreement will create, or be deemed to create, any rights, obligations or legal relationship between ODS and any Member.

10.12 THIRD PARTY ADMINISTRATORS

ODS recognizes that the Plan Administrator may chose to work with Third Party Administrators (TPAs) for handling of COBRA and retiree membership or for active eligibility processing. In these situations, ODS will accept eligibility or payment from the TPA as if it were from the Plan Administrator provided information was received timely and accurately. However, ODS reserves the right to confer only with the Plan Administrator if the TPA process is causing accuracy concerns, processing challenges or timing delays.

10.13 FORCE MAJEURE

No Party will be deemed to be in violation of this Agreement if it is prevented from performing its obligations by events beyond its control including, without limitation, acts of God, war or insurrection, terrorism, flood or storm, strikes or rule or action of the government or agency. The Parties will make a good faith effort, however, to assure Members have access to In-Network Provider services consistent with applicable law, despite such events.

10.14 SURVIVAL

All rights and obligations will cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 6, 8, 9, 10.1 and 10.2.

10.15 HEADINGS

The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement and are not to be considered in construing or interpreting this Agreement.

10.16 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

10.17 FIDELITY BOND

Plan Sponsor will provide a fidelity bond for fiduciaries and every person who handles funds or other property of the Plan if required by ERISA for the benefit of the Plan.

10.18 BANKRUPTCY

If bankruptcy, receivership or liquidation proceedings are commenced with respect to any Party hereto, and if this Agreement has not otherwise been terminated, then a non-filing Party may suspend all further performance of this Agreement pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision of Federal or State law. Any such suspension of further performance by a non-filing Party pending the defaulting Party's assumption or rejection of this Agreement will not be a breach of this Agreement and will not affect the non-filing Party's right to pursue or enforce any of its rights under this Agreement or otherwise.

10.19 CLASS ACTIONS

Plan Sponsor and ODS recognize that, from time to time, ODS, Plan Sponsor or Plan may receive notice of a pending class action that seeks recovery on behalf of a class that may include ODS or Plan Sponsor (a Class Action). Notwithstanding any language to the contrary in this Agreement, ODS will have no duty to participate in the Class Action on behalf of Plan Sponsor or Plan. ODS does not have a duty to notify Plan Sponsor or Plan (or any plan) of receipt of notice of any Class Action. Plan Sponsor or Plan may request that ODS provide information for a Class Action or assist in pursuing a recovery for Plan Sponsor in a Class Action. ODS will have the sole discretion to accept or reject such a request. If accepted, ODS will be the appointed agent of the Plan and submit necessary claim information. The services provided will be subject to the payment of additional administrative fees and other related costs to ODS by Plan Sponsor.

10.20 GOVERNING LAW

Unless preempted by federal law, this Agreement will be governed, construed, performed and enforced in accordance with the laws of the **State of Alaska**.

10.21 DISPUTE RESOLUTION

If a dispute should arise out of this Agreement or a breach thereof, the Parties will attempt in good faith to resolve the dispute informally through discussion, the exchange of documents or meetings following a Party's written notice of the existence and nature of the dispute.

If the Parties are unable to resolve the dispute within 30 days after the date of such written notice, they will, while continuing to attempt to resolve the dispute, also establish a procedure for mediation of the dispute in the event it is not resolved.

If the Parties are unable to resolve the dispute, or to agree to a procedure for mediation of the dispute, within 60 days after the date of the written notice of dispute, then the dispute will be submitted to mediation, initiated by written notice from a Party, in accordance with the model procedures of the International Institute for Conflict Prevention & Resolution.

In the event the Parties are not able to resolve the dispute as described above, the Parties agree to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association unless the Parties agree to another method of dispute resolution. The Arbitration will be conducted in the Anchorage Borough, Alaska. The Parties agree that the arbitrator's award will be final and binding, may include an apportionment of attorney fees and costs, and may be enforced in any court having jurisdiction thereof.

(variable: choose one)

Signature [page] [pages] to follow.

This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a Party, each other Party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting Party.

Plan Sponsor:

ODS:

[PLAN SPONSOR]

ODS

By: _____
Its: _____

By: _____
Its: _____

Address for Notice:

Address for Notice:

[PLAN SPONSOR]

ODS

Attn: _____

Attn: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

PLAN:

**[PLAN NAME, AS LISTED ON
MEMBER HANDBOOK]**

By: [PLAN ADMINISTRATOR]
Its: Plan Administrator

By: _____
Its: _____

Address for Notice:

[PLAN ADMINISTRATOR]

Attn: _____

Fax: _____

E-mail: _____

DRAFT